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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,080	03/15/2004	Arnel Koster	10573-1	9479

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National IP Rights Center, LLC
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EXAMINER

LOWE, MICHAEL S

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/801,080

Applicant(s)

KOSTER, ARNEL

Examiner

M. Scott Lowe

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 7,8,13,19-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-12 and 14-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species A: Figures 2A, 2B (headache rack winch embodiment)

Species B: Figures 3A, 3B (headache rack ram embodiment)

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Applicant is further required to select one of the following subspecies of the above species selected above:

Subspecies C: Figures 1-5, hay bale stabilizer with squeeze bars

Subspecies D: Not On Drawings, hay bale stabilizer with tines stanchion

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Since the Subspecies D is not on the drawings, the drawings and specification must be amended to properly describe this embodiment if selected or if a generic claim is allowed.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Scott Fields on 2/8/06 a provisional election was made without traverse to prosecute the invention of Species A and Subspecies C, claims 1-6,9-12,14-18,. Affirmation of this election must be made by applicant in replying to this Office action. Claims 7,8,13,19-25 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the tines stanchion

must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claim 1 is objected to because of the following informalities: claim 1, line 4, is missing "a" after "engaging". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-6,9-12,14-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claims are directed to a hay bale retriever/stacker but there is no explanation of how the bales are stacked nor is there any explanation of how bales are placed on or removed from the hay engagement portion. There is no structure disclosed that is capable of doing the actual loading and removal to/from the hay engagement portion 40.

Claim 9 states "a dolly mounted on the hay engagement portion, wherein the dolly is capable of sliding from the first position to the second position to load and unload hay bales." The drawings and specification clearly show that the dolly 41 cannot move from first position 22 to second position 21. The dolly can only move from its starting position to near position 22. For sake of examination it is assumed the applicant meant the dolly could move toward position 22 only.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,10-12, are rejected under 35 U.S.C. 102(b) as being anticipated by Graham (US 3,478,898).

Re claim 1, Graham teaches a hay bale retriever/stacker 10, comprising:

a static bed 13, having a front end and a rear end;

a tilt bed 12, mounted at the rear end of the static bed;

a hay engagement portion 23,24, mounted on the tilt bed, for engaging hay bale during retrieval;

a headache rack (66,32, or 33), slidably mounted on the static bed 13, capable of sliding from a first position proximate to the rear end of the static bed to a second position proximate to the front end of the static bed; and

a hay bale stabilizer (66,32, or 33) disposed on the static bed proximate to the rear end of the static bed to stabilize the hay bale.

Re claim 2, Graham teaches at least one hydraulic ram 29 mounted on the tilt bed 12 to move the hay bale forward to the static bed 13.

Re claim 10, Graham teaches the hay bale stabilizer (66,32, or 33) includes a first squeeze bar (72,73,68,69,etc.) for stabilizing the hay bales.

Re claim 11, Graham teaches the hay bale stabilizer (66,32, or 33) includes a second squeeze bar (72,73,68,69,etc.) for stabilizing the hay bales.

Re claim 12, Graham teaches at least one hydraulic ram (76,77,86) for activating the first squeeze bar (72,73,68,69,etc.) and at least one hydraulic ram (76,77,86) for activating the second squeeze bar (72,73,68,69,etc.).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graham (US 3,478,898).

Re claim 3, Graham teaches a hydraulic ram 29 but does not mention a second hydraulic ram mounted on the tilt bed to move the hay bale forward to the static bed. However, it is well known that a single hydraulic ram may be replaced by two or more similar hydraulic rams to form an equivalent device. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Graham to have a second hydraulic ram 29 mounted on the tilt bed to move the hay bale forward to the static bed in order to have a backup ram or to reduce the strain by dividing between two rams.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graham (US 3,478,898) in view of Babb (US 6,478,522).

Re claim 4, Graham teaches a hydraulic ram 35 and pulleys 34 mounted on the static bed for slidably moving the headache rack (66,32, or 33) from the second position to the first position but does not mention a hydraulic winch and cable. Babb teaches (column 4, third paragraph) it is well known to use a hydraulic winch and cable in place of hydraulic cylinders to move items. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Graham by the general teaching of Babb to have a hydraulic winch and cable mounted on the static bed for slidably moving the headache rack from the second position to the first position as a well known equivalent and along remove the strain on the device caused by lifting the bales by ram 35.

Re claim 5, Graham teaches a corner post 83 disposed at the front end of the static bed.

Re claim 6, Graham teaches static cables 96 disposed between and mounted on the corner post 83 and the hay bale stabilizer, on opposing sides of the static bed.

Claim 9 is rejected under 35 U.S.C. 102(b) as anticipated by Graham (US 3,478,898) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Graham (US 3,478,898) in view of Tilley (US 5,478,194).

Re claim 9, Graham teaches a dolly 24 mounted on the hay engagement portion, wherein the dolly 24 is capable of sliding from the first position to the second position to

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load and unload hay bales. If it is determined that the item 24 is not a dolly then, Tilley teaches (column 4) use of a pusher (not numbered, no details) to push bales of the tilt bed 235 to make sure the bales are fully transferred to the bed 245. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Graham to have a pusher (dolly) like item 32 (since design already known) to make sure the bales are fully transferred to the bed 13.

Claims 14,16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graham (US 3,478,898) in view of Babb (US 6,478,522).

Re claim 14, Graham teaches a hay bale retriever/stacker 10, comprising:

- a static bed 13, having a front end and a rear end;
- a tilt bed 12, mounted at the rear end of the static bed;
- a hay engagement portion 23,24, mounted on the tilt bed, for engaging hay bale during retrieval;
- a headache rack (66,32, or 33), slidably mounted on the static bed 13, capable of sliding from a first position proximate to the rear end of the static bed to a second position proximate to the front end of the static bed; and
- a hay bale stabilizer (66,32, or 33) disposed on the static bed proximate to the rear end of the static bed to stabilize the hay bale;
- at least one hydraulic ram 29 mounted on the tilt bed 12 to move the hay bale forward to the static bed 13.

Graham teaches a hydraulic ram 29 but does not mention a second hydraulic ram mounted on the tilt bed to move the hay bale forward to the static bed. However, it is well known that a single hydraulic ram may be replaced by two or more similar hydraulic rams to form an equivalent device. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Graham to have a second hydraulic ram 29 mounted on the tilt bed to move the hay bale forward to the static bed in order to have a backup ram or to reduce the strain by dividing between two rams.

Graham teaches a hydraulic ram 35 and pulleys 34 mounted on the static bed for slidably moving the headache rack (66,32, or 33) from the second position to the first position but does not mention a hydraulic winch and cable. Babb teaches (column 4, third paragraph) it is well known to use a hydraulic winch and cable in place of hydraulic cylinders to move items. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Graham by the general teaching of Babb to have a hydraulic winch and cable mounted on the static bed for slidably moving the headache rack from the second position to the first position as a well known equivalent and along remove the strain on the device caused by lifting the bales by ram 35.

Re claim 16, Graham teaches the hay bale stabilizer (66,32, or 33) includes a first squeeze bar (72,73,68,69,etc.) for stabilizing the hay bales.

Re claim 17, Graham teaches the hay bale stabilizer (66,32, or 33) includes a second squeeze bar (72,73,68,69,etc.) for stabilizing the hay bales.

Re claim 18, Graham teaches at least one hydraulic ram (76,77,86) for activating the first squeeze bar (72,73,68,69,etc.) and at least one hydraulic ram (76,77,86) for activating the second squeeze bar (72,73,68,69,etc.).

Claim 15 is rejected under 35 U.S.C. 103(a) as obvious over Graham (US 3,478,898) in view of Babb (US 6,478,522) as applied in claim 14, and further in view of Tilley (US 5,478,194).

Re claim 15, Graham teaches a dolly 24 mounted on the hay engagement portion, wherein the dolly 24 is capable of sliding from the first position to the second position to load and unload hay bales. If it is determined that the item 24 is not a dolly then, Tilley teaches (column 4) use of a pusher (not numbered, no details) to push bales of the tilt bed 235 to make sure the bales are fully transferred to the bed 245. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Graham to have a pusher (dolly) like item 32 (since design already known) to make sure the bales are fully transferred to the bed 13.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Backman (US 3,549,023)

Welker (US 3,622,016)

Fachini (US 3,788,495)

Stefanelli (US 3,837,508)

Butler (US 3,994,367)

Havens (US 4,047,628)

Spikes (US 4,498,829)

Siebenga (US 4,619,570)


Cox (US 6,079,926)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Scott Lowe whose telephone number is (571) 272-6929. The examiner can normally be reached on 6:30am-4:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

msl



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